

STATE OF NEW YORK

3499--A

R. R. 442

2023-2024 Regular Sessions

IN ASSEMBLY

February 3, 2023

Introduced by M. of A. CARROLL, STIRPE, REYES, TAYLOR, DICKENS, DeSTEFANO, RAMOS, MIKULIN, SAYEGH, SMITH, WILLIAMS, COOK, SEAWRIGHT, REILLY, MILLER, ROZIC, EPSTEIN, CRUZ, STECK, RA, BENEDETTO, JACOBSON, HYNDMAN, THIELE, LAVINE, STERN, JONES, BUTTENSCHON, BRAUNSTEIN, FALL, PAULIN, L. ROSENTHAL, WALLACE, DILAN, AUBRY, JEAN-PIERRE, DARLING, WALKER, ANDERSON, JACKSON -- Multi-Sponsored by -- M. of A. FITZPATRICK, HEVESI, SIMON -- read once and referred to the Committee on Consumer Affairs and Protection -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- ordered to a third reading -- amended on the special order of third reading, ordered reprinted as amended, retaining its place on the special order of third reading

AN ACT to amend the general business law and the vehicle and traffic law, in relation to automobile broker businesses

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 1 of section 736 of the general business law,
2 as amended by chapter 28 of the laws of 2018, is amended to read as
3 follows:
4 1. "Automobile broker business" means any person who, for a fee,
5 commission or other valuable consideration, regardless of whether such
6 fee, commission, or consideration is paid directly by a consumer, offers
7 to provide, provides, or represents that he or she will provide a
8 service of purchasing, arranging, assisting, facilitating or effecting
9 the purchase or lease of an automobile as agent, broker, or intermediary
10 for a consumer. "Automobile broker business" does not include any person
11 registered as a dealer pursuant to article sixteen of the vehicle and
12 traffic law, only when operating in a manner pursuant to such registra-
13 tion under article sixteen of the vehicle and traffic law, any person
14 registered under section four hundred fifteen-a of the vehicle and traf-
15 fic law, only when operating in a manner described in section four

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD00498-02-3

1 hundred fifteen-a of the vehicle and traffic law, an automobile auctio-
2 neer, only when operating in the manner described in section twenty-
3 three of this chapter, nor any bona fide employee of a registered dealer
4 while acting for such dealer, or any person who sells, offers for sale
5 or lease or acts as agent, broker or intermediary in effecting the
6 purchase or lease of three or fewer automobiles in any calendar year,
7 any national service which aggregates information for consumers, but
8 does not otherwise have contact with consumers, or any motor vehicle
9 franchisor, manufacturer, [~~or~~] distributor, distributor branch or facto-
10 ry branch registered under article sixteen of the vehicle and traffic
11 law.

12 § 2. Section 736 of the general business law is amended by adding a
13 new subdivision 4 to read as follows:

14 4. "Place of business" means a designated permanent location at which
15 the business of the automobile broker business is conducted.

16 § 3. The general business law is amended by adding a new section 736-b
17 to read as follows:

18 § 736-b. Place of business required. 1. No person shall engage in
19 business as an automobile broker business, as defined in section seven
20 hundred thirty-six of this article, without maintaining a place of busi-
21 ness.

22 2. The certificate of registration for an automobile broker business
23 pursuant to paragraph c of subdivision seven of section four hundred
24 fifteen of the vehicle and traffic law shall be amended within thirty
25 days of a change of address of an automobile broker business to reflect
26 the new address of its place of business.

27 § 4. Subdivision 1 and the opening paragraph of subdivision 2 of
28 section 738 of the general business law, subdivision 1 and the opening
29 paragraph of subdivision 2 as added by chapter 616 of the laws of 1988,
30 the opening paragraph and paragraph (e) of subdivision 1 as amended by
31 chapter 28 of the laws of 2018, and paragraphs (f) and (g) of subdivi-
32 sion 1 as amended by chapter 477 of the laws of 2017, are amended to
33 read as follows:

34 1. Prior to the purchase or lease of an automobile, the consumer and
35 the automobile broker business shall enter into a contract. Every
36 contract between a consumer and an automobile broker business for the
37 purchase or lease of an automobile shall be in writing, shall be dated,
38 shall contain the street address of the place of business of the automo-
39 bile broker business, the registration number issued to the automobile
40 broker business pursuant to section four hundred fifteen of the vehicle
41 and traffic law and the name and address of the consumer and shall be
42 signed by the consumer and by the automobile broker business. Every
43 contract shall comply with the requirements set forth in this section
44 and contain the following:

45 (a) A complete description of the automobile and each option, if any,
46 ordered; a statement of whether the automobile is or will be manufac-
47 tured in accordance with United States specifications and is or will be
48 certified by the manufacturer as such; if the automobile is not or will
49 not be manufactured in accordance with United States safety and environ-
50 mental specifications, and the consumer has retained the automobile
51 broker business to arrange for the modification of the automobile to
52 meet such specifications, the name and street address of the modifica-
53 tion facility and a statement in immediate proximity to such information
54 that the automobile broker business assumes full financial responsibil-
55 ity that the automobile will be properly modified to meet all United
56 States safety and environmental specifications.

1 (b) The price of the automobile including any options ordered. If the
2 price set forth is an estimated price, a statement in immediate proximi-
3 ty to the price that the price is an estimated price only and that the
4 consumer has the right to cancel the contract and to receive a full
5 refund if the final price exceeds the estimated price by more than five
6 percent.

7 (c) The estimated delivery date of the automobile and the place of
8 delivery and a statement in immediate proximity to the estimated deliv-
9 ery date that, if the automobile has not been delivered in accordance
10 with the contract within thirty days following such estimated delivery
11 date, the consumer has the right to cancel the contract and to receive a
12 full refund, unless the delay in delivery is attributable to the consum-
13 er.

14 (d) A statement of whether or not the manufacturer's warranty accompa-
15 nying the automobile is the same warranty as that furnished to purchas-
16 ers of that make automobile from an authorized dealer located in the
17 United States.

18 (e) A statement that the broker will not accept payment for their
19 services from anyone other than the motor vehicle dealer.

20 (f) A statement that the consumer has the option to take delivery of a
21 motor vehicle at the selling or leasing dealership.

22 (g) A description of any other services and an itemization of the
23 charges for each. Such description shall include disclosure of the auto-
24 mobile dealer from which the automobile was purchased or leased, as well
25 as all fees, commissions or other valuable considerations paid by an
26 automobile dealer to the automobile broker business for selling, arrang-
27 ing, assisting or effecting the sale or lease of an automobile as agent,
28 broker, or intermediary between the consumer and the automobile dealer.

29 [~~(f)~~] (h) If a consumer elects to cancel the contract pursuant to
30 paragraph (b) or (c) of this subdivision, he or she shall notify in
31 writing the automobile broker business at the address specified in the
32 contract. The automobile broker business shall make a full refund to the
33 consumer within ten business days following receipt of the request for a
34 refund. The contract shall contain a statement, setting forth the
35 consumer's right to cancel the contract under paragraphs (b) and (c) of
36 this subdivision and the refund obligations of the automobile broker
37 business.

38 [~~(g)~~] (i) The statements required by paragraphs (a), (b), (c), [~~and~~]
39 (e), (f), (g) and (h) of this subdivision shall be printed in at least
40 [~~ten~~] twelve point bold type.

41 The contract shall be accompanied by a completed form in duplicate,
42 captioned "Notice of Cancellation" which shall be attached to the
43 contract and easily detachable, and which shall contain in at least
44 [~~ten~~] twelve point type the following:

45 § 5. Section 741-a of the general business law, as amended by chapter
46 477 of the laws of 2017, is amended to read as follows:

47 § 741-a. Advertising. 1. Automobile broker businesses shall clearly
48 and conspicuously disclose the following in all advertisements in any
49 medium, and in any print advertisement such disclosures shall not appear
50 in any footnotes and shall be situated in the top half of any such
51 advertisement in an easily readable typeface:

52 (a) That the automobile broker business is not a registered new motor
53 vehicle dealer but is a registered automobile broker business as defined
54 in section four hundred fifteen of the vehicle and traffic law;

55 (b) The registration number issued to the automobile broker business
56 pursuant to section four hundred fifteen of the vehicle and traffic law;

1 (c) Whether any fees may be imposed by the automobile broker business
2 for services rendered. Details of such compensation shall be provided by
3 the automobile broker business upon request by the consumer; [~~and~~]

4 (d) That no warranty repair services will be provided by the automo-
5 bile broker business; and

6 (e) That the automobile broker business is not affiliated with any
7 manufacturer, dealership, or dealership group.

8 2. The official business certificate of registration shall be clearly
9 and conspicuously displayed at the place of business of an automobile
10 broker business.

11 § 6. The general business law is amended by adding a new section 741-c
12 to read as follows:

13 § 741-c. Private information security. In addition to the requirements
14 of subdivision twenty-one of section four hundred fifteen of the vehicle
15 and traffic law, an automobile broker business shall:

16 1. keep and maintain all consumer records containing private informa-
17 tion in a safe place that is not accessible to persons not employed by
18 the automobile broker business, including by keeping and maintaining a
19 clear and permanent physical barrier from other businesses that share or
20 neighbor its place of business;

21 2. have a separate mailbox at such place of business for the automo-
22 bile broker business; and

23 3. have a method of securing personal information, including but not
24 limited to in a locking cabinet or safe.

25 § 7. Section 415 of the vehicle and traffic law is amended by adding
26 four new subdivisions 22, 23, 24 and 25 to read as follows:

27 22. Compliance. All dealers and automobile broker businesses regis-
28 tered under subdivisions three and three-a of this section shall certify
29 and attest to compliance with sections three hundred ninety-nine-cc, as
30 added by chapter 655 of the laws of 2005, three hundred ninety-nine-dd,
31 as added by chapter 487 of the laws of 2006, three hundred ninety-nine-
32 ddd, three hundred ninety-nine-h, three hundred ninety-nine-oo, three
33 hundred ninety-nine-p, three hundred ninety-nine-pp, eight hundred nine-
34 ty-nine-bb of the general business law, and part three hundred fourteen
35 of title sixteen of the code of federal regulations as applicable.

36 23. Automobile broker record requirements. (a) For each completed
37 transaction and within three business days of consummation thereof,
38 automobile brokers shall maintain a permanent paper file record that
39 clearly evidences and records the make, model, year, color and vehicle
40 identification number of all previously unregistered motor vehicles for
41 which such broker has provided a service of purchasing, arranging,
42 assisting, facilitating or effecting the purchase or lease of such motor
43 vehicle. Such records shall be maintained for a six-year period after
44 consummation of the transaction. Such records shall also include the
45 name and address of the purchaser or lessee of such motor vehicle, the
46 date of sale or commencement of lease with respect to such motor vehicle
47 and the name and address of the dealer from which the motor vehicle was
48 purchased or leased.

49 (b) The records maintained by the automobile broker businesses shall
50 include a copy of the dealer rate sheets received by the automobile
51 broker from the dealers that were relied upon by the automobile broker
52 in connection with such transaction.

53 (c) Such records shall be open for inspection by the commissioner, or
54 his or her agent, during reasonable business hours.

55 (d) As an alternative to paper file records, an automobile broker may
56 use a computer and appropriate software to maintain the records required

1 to be kept by this section, provided all information required by para-
2 graphs (a) and (b) of this subdivision are duly recorded and maintained
3 in accordance with this subdivision.

4 24. Maintenance records. For each sale or lease of a motor vehicle
5 that involves an automobile broker business, the dealer must obtain
6 evidence of the automobile broker business' registration and the
7 broker's registration number and maintain such records in the deal jack-
8 et for each transaction which also shall contain the purchase order,
9 copies of the title and registration documents, the bill of sale and the
10 retail installment sale contract required under article ten of the
11 personal property law or the retail lease agreement required under arti-
12 cle nine-A of the personal property law.

13 25. Broker compensation. No dealer may offer or pay an automobile
14 broker business any fee, or commission, other than compensation
15 disclosed pursuant to section seven hundred thirty-eight or seven
16 hundred forty-one-b of the general business law or section three hundred
17 two or three hundred thirty-seven of the personal property law.

18 § 8. The general business law is amended by adding a new section 745
19 to read as follows:

20 § 745. Preemption. The provisions of this article and section four
21 hundred fifteen of the vehicle and traffic law shall govern the require-
22 ments and obligations with respect to the automobile broker business
23 notwithstanding any other law to the contrary. No local or municipal law
24 shall be enacted which shall impose any different or other obligations
25 on the automobile broker business including a requirement of any fee or
26 license for the automobile broker business.

27 § 9. Section 741-b of the general business law, as added by chapter 28
28 of the laws of 2018, is amended to read as follows:

29 § 741-b. Disclosure. An automobile broker business shall provide a
30 disclosure at the time such automobile broker business takes an order to
31 search for a leased or purchased vehicle meeting the prospective
32 lessee's specifications. Such disclosure shall provide the amount of any
33 fees, commissions or other valuable consideration the automobile broker
34 business expects to receive, if known, from a dealer, lessor or any
35 other person or entity for any assistance the automobile broker business
36 provides in effecting the lease or purchase transaction. If the amount
37 of any such fees, commissions or other valuable consideration the auto-
38 mobile broker business expects to receive is unknown at the time of the
39 required disclosure, the automobile broker business shall disclose: (a)
40 whether it has a contract with any dealer, lessor or any other person or
41 entity for the provision of assistance in effecting a lease or purchase
42 transaction; [~~and~~] (b) [~~whether~~] that the automobile broker business
43 [~~may~~] shall be compensated by the dealer, lessor or any other person or
44 entity for any assistance in effecting such lease transaction; and (c)
45 that the amount of any such fees, commissions or other valuable consid-
46 eration the automobile broker business receives shall be disclosed on
47 the executed lease or purchase contract or finance agreement pursuant to
48 section three hundred two or three hundred thirty-seven of the personal
49 property law.

50 § 10. The general business law is amended by adding a new section
51 741-c to read as follows:

52 § 741-c. Prohibited acts. An automobile broker business is prohibited
53 from:

54 1. advertising that such automobile broker business has any new auto-
55 mobile in stock;

1 2. advertising any price figure in an advertisement unless such figure
2 represents the actual price of the advertised automobile, exclusive of
3 registration and titles, fees and taxes;

4 3. starting or completing any financing or credit application or the
5 lease or purchase agreement of an automobile on behalf of a consumer or
6 dealer; and

7 4. accepting any payment other than that disclosed under section seven
8 hundred thirty-eight or seven hundred forty-one-b of this article from
9 anyone other than the dealer.

10 § 11. Section 743 of the general business law, as amended by chapter
11 372 of the laws of 2016, is amended to read as follows:

12 § 743. Enforcement by attorney general. 1. In addition to the other
13 remedies provided, whenever there shall be a violation of this article,
14 application may be made by the attorney general in the name of the
15 people of the state of New York to a court or justice having jurisdic-
16 tion by a special proceeding to issue an injunction, and upon notice to
17 the defendant of not less than five days, to enjoin and restrain the
18 continuance of such violations; and if it shall appear to the satisfac-
19 tion of the court or justice that the defendant has, in fact, violated
20 this article, an injunction may be issued by such court or justice,
21 enjoining and restraining any further violation, without requiring proof
22 that any person has, in fact, been injured or damaged thereby. In any
23 such proceeding, the court may make allowances to the attorney general
24 as provided in paragraph six of subdivision (a) of section eighty-three
25 hundred three of the civil practice law and rules, and direct restitu-
26 tion. Whenever the court shall determine that a violation of this arti-
27 cle has occurred, the court shall impose a civil penalty of not less
28 than one thousand dollars and not more than three thousand dollars for
29 each violation. In connection with any such proposed application, the
30 attorney general is authorized to take proof and make a determination of
31 the relevant facts and to issue subpoenas in accordance with the civil
32 practice law and rules.

33 2. The provisions of this article may be enforced concurrently by a
34 municipal consumer affairs office.

35 § 12. Severability. If any clause, sentence, paragraph, subdivision,
36 section or part of this act shall be adjudged by any court of competent
37 jurisdiction to be invalid, such judgment shall not affect, impair, or
38 invalidate the remainder thereof, but shall be confined in its operation
39 to the clause, sentence, paragraph, subdivision, section or part thereof
40 directly involved in the controversy in which such judgment shall have
41 been rendered. It is hereby declared to be the intent of the legislature
42 that this act would have been enacted even if such invalid provisions
43 had not been included herein.

44 § 13. This act shall take effect on the one hundred eightieth day
45 after it shall have become a law. Effective immediately, the addition,
46 amendment and/or repeal of any rule or regulation necessary for the
47 implementation of this act on its effective date are authorized to be
48 made and completed on or before such effective date.